

LEG. FINANCE - BILLS 1985 - 1986 2256

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interest of 12% per annum on the unpaid taxes are changed if returns are filed late.

Given these facts, this taxpayer would be forced to file a return with estimated consumption figures. This would put us into a penalty situation of one sort or another and also require us to file amended returns and possible requests for refund, i.e., if the consumption was under estimated we would be required to file an amended return, pay the additional tax plus penalties and interest. On the other hand, if the consumption was over estimated, we would have to file an amended return and also file for a refund, for the amount of the overpayment.

The crux here is that although the state charges penalties and interest on late filings, there is no provision for paying interest to the taxpayer on any overpayments.

To accurately track, calculate and file the returns for this tax would force us to add a person to our staff at an estimated annual cost of approximately \$30,000.

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Using as a base the return filed in October 1985 where we paid approximately \$12,900 in taxes, our annual tax liability would be estimated at \$150,000. To force the taxpayer to add an additional cost of \$30,000 for additional staff plus additional return filings, penalty and interest payments and loss of use of funds in the case of overpayments seems to be an extremely harsh burden for the taxpayer to bear.

I would also like to point out that Crowley's Alaska Hydro-Train operation sails the inside route through southeastern Alaska on its weekly trips to and from Whittier. Although it extends our sailing time by approximately one day over the more risky outside route, it is for safety reasons that we, and I assume other carriers, use the inside route, exposing ourselves to the fuel use tax interpretation held by the Department of Revenue. If SB 387 is not passed and the tax upheld, we would not change our route, however, a more marginal carrier might change his sailing to the outside route to avoid the tax, thus increasing the risk to safe arrival of cargo, crew and equipment.

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At any rate, if SB 387 fails, increased costs will be passed on to the shippers, eventually affecting the cost of goods purchased by the ultimate consumer, the permanent residents of the State of Alaska.

I wish to thank the committee on behalf of Crowley Maritime Corporation and myself for allowing the time to express the views of a person who is intimately involved in administrating compliance and encourage your support of Senate Bill 387.

TESTIMONY OF TOTEM OCEAN TRAILER EXPRESS, INC. (TOTE)
BY EVERETT TROUT, VICE PRESIDENT OF OPERATIONS
BEFORE THE ALASKA SENATE FINANCE COMMITTEE
IN SUPPORT OF SENATE BILL NO. 387
MARCH 4, 1986

Madam Chairperson, Mr. Chairman, members of the Committee, TOTE is testifying today on our own behalf and on behalf of other ocean carriers shipping between the states of Alaska and Washington. We wish to express our support of Senate Bill 387, which was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft.

The Motor Fuel Tax Act was passed as law by the territorial legislature in ~~1949~~¹⁹⁴⁶. We believe that the legislature intended to tax fuel sold in Alaska and bulk fuel shipped as cargo into Alaska for personal use in the state. The legislature intended to prevent the shipping of un-taxed bulk fuel into Alaska. The legislature did not intend to tax fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft.

Alaska followed this legislative intent until June of 1985. No tax was asserted or collected on fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft. In June of 1985, the Department of Revenue arbitrarily determined to redefine the legislative intent and to collect a tax on this bunker fuel. We strongly disagree with this radical new interpretation and believe that, in attempting to reinterpret the law and impose a new tax, the Department violated the intent of the legislature as expressed in both the Motor Fuel Tax Act and the Alaska Administrative Procedure Act.

The Department has asserted this tax is a user tax. The concept of a user tax is to pay for a service. The State of Alaska itself provides virtually no service for our industry. Aids to navigation, dredging, safety at sea, inspections, and vessel safety are covered by the federal government. TOTE's port and dockside facilities are paid for by dockage fees and rental payments to the Port of Anchorage, which were approximately \$1.5 million in 1985. In addition, TOTE is an Alaska Corporation and pays substantial taxes to the State of Alaska, including income, property and payroll taxes.

A tax on bunker fuel consumed in Alaska waters encourages carriers to avoid travel within the three-mile limit. Ports such as Anchorage, which lie farther within Alaska waters, would be discriminated against, as would carriers serving those ports. TOTE serves the Port of Anchorage, only, in our service to Alaska. Our ships cruise six hours in each direction through Cook Inlet. If a tax is imposed on bunker fuel, most of TOTE's tax would result from sailing through Cook Inlet to Anchorage.

Any increase in taxes will increase costs to the Alaska consumer. The past two years have been unprofitable for many carriers in our industry, and several operators have been forced from the business as a result. The next two years are also expected to be difficult. Any new taxes would worsen the condition of the industry and this ultimately increases costs to the Alaska consumer.

Our industry has filed appeals with the Department of Revenue contesting this new tax. Our attorneys have filed a legal brief documenting the impropriety of the Department's imposition of a new tax. Although we expect to ultimately prevail in this matter, this arduous and expensive process can be avoided by clarifying the Act through Senate Bill 387.

In Summary, Senate Bill 387 was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft. This bill will relieve the industry and the Department of Revenue from an expensive appeal and litigation process resulting from the Department's radical new interpretation of the Act. Finally, this bill will remove a burden from water carriers and consumers in Alaska.

I thank you for this opportunity to express the views of TOTE and of our industry. We encourage your support of Senate Bill 387 and will answer any questions you have at this time.

LEGAL ANALYSIS OF THE ALASKA MOTOR FUEL TAX
AS APPLIED TO FUEL PURCHASED OUTSIDE THE STATE
AND CONSUMED IN ALASKAN WATERS

SUBMITTED ON BEHALF OF U.S. FLAG CARRIERS

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DATED: SEPTEMBER 18, 1985

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LEGAL ANALYSIS OF THE ALASKA MOTOR FUEL TAX AS APPLIED TO
FUEL PURCHASED OUTSIDE THE STATE AND CONSUMED IN ALASKAN WATERS

I. INTRODUCTION

The Department of Revenue of the State of Alaska by letter dated June 10, 1985 has advised numerous foreign and domestic shipping lines engaged in foreign and interstate commerce that they are subject to the Motor Fuel Tax (AS 43.40.010) of five cents per gallon on all fuel consumed in propelling the vessels in Alaskan waters. The tax is imposed although the fuel is purchased out-of-state and does not come to rest in Alaska.

This matter concerns subsections of the statute as interpreted, administered, and enforced by the Audit Division whereby it claims the tax is applicable on motor fuel used (consumed) in and on watercraft of all descriptions. Alaska Statute 43.40.010 (b)(2) and (c) are at issue. Subsection (a) of the statute involving tax of five cents a gallon on the sale or transfer of such fuel in Alaska is not in dispute.

Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, ***

(c) *** Every user shall likewise remit the tax accrued on motor fuel actually used by the user during each month.

Sec. 43.40.100. Definitions.

(2) "Motor Fuel" means fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, . . . ***

(4) "User" means a person consuming or using motor fuel, who either

(A) purchases the fuel out of the state and ships it into the state for personal use in the state;

The Department of Revenue has interpreted the subsections in the following manner:

"This tax is a user tax. The fuel purchased out of state and used or consumed within Alaska waters on watercraft is subject to the Alaska Motor Fuel tax. Every user is required to remit the tax accrued on motor fuel imported into the State and used during each month." [Emphasis added]. Letter of June 10, 1985 from John Hanson, Revenue Auditor.

II. ISSUE

Whether the Audit Division's interpretation of the motor fuel tax statute is correct and constitutional.

III. ARGUMENT

A. UNCONSTITUTIONAL BURDEN ON COMMERCE

1. The Motor Fuel Tax as administered by the Audit Division is an unconstitutional burden on interstate and foreign commerce because it is impermissible for a state to tax the mere consumption of fuel used in providing the motive power of vessels sailing in its waters. Helson v. Kentucky, 279 U.S. 245, 73 L.Ed. 683, 49 S.Ct. 279 (1929). Helson was reaffirmed by the Supreme Court in United Airlines v. Mahin, 410 U.S. 623, 35 L.Ed.2d 545, 93 S.Ct. 1186 (1973). The court in United Airlines re-emphasized the validity of the distinction of why it is permissible for a state to tax storage of fuel before loading, but not mere consumption of it. At 35 L.Ed.2d 552-553:

Retaining the line at this point minimizes the danger of double taxation and yet provides a source of revenue having a relation to the event taxed. Double taxation is minimized because the fuel cannot be taxed by States through which it is transported, under Michigan-Wisconsin Pipe Line Co. v. Clavert, 347 US 157, 98 L Ed 583, 74 S Ct 396 (1954), nor by the State in which it is merely consumed, under Helson. A fair result is achieved because a State in which preloading storage

facilities are maintained is likely to provide substantial services to those facilities, including police protection and the maintenance of public access roads.

The court further stated at 544:

Multiple taxation and tax windfalls are avoided because only one State--the State of storage before loading--has a local event upon which a tax is imposed. Under Helson, States over which the planes fly will be unable to impose a tax on mere consumption.

See Midwestern Gas v. Wisconsin Department of Revenue, 267 N.W.2d 253, 84 Wis.2d 261 (Wis. 1978) cert. denied 439 U.S. 997 where attempts by the Wisconsin Department of Revenue to apply a use tax on the portion of natural gas flowing through an interstate pipeline and consumed at compressor stations to power the engines therein was held invalid because it violated the rule of Helson. The court further found an insufficient nexus between the state and the taxed event. See also Midcontinent Broadcasting, etc. v. Wisconsin Department of Revenue, 297 N.W.2d 191, 198-202, 98 Wis.2d 379 (1980). Both of the Wisconsin cases affirmed the rule of Helson in light of the Complete Auto Transit test, infra.

2. COMPLETE AUTO TRANSIT TEST

In 1977 the U.S. Supreme Court adopted a four prong test to determine the validity of a state tax on activity in interstate commerce. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 51 L. Ed.2d 326, 97 S. Ct. 1076. Under the test a state tax does not offend the Commerce Clause if it (1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce and (4) is fairly related to services provided by the state. 51 L. Ed.2d at 331.

(a) UNCONSTITUTIONAL DISCRIMINATION

The Alaska Motor Fuel Tax in addition to clearly violating the rule of Helson and United Airlines fails the test of Complete Auto Transit. A non-resident vessel which purchases its bunker or diesel fuel for propulsion in interstate or foreign commerce at a foreign or out-of-state port most often pays a tax on the fuel there. When it subsequently enters Alaskan waters it is charged the user tax on the same fuel. However, if the fuel is purchased in Alaska the taxpayer is charged only one tax of five cents a gallon. AS 43.40.010(a)(2). Thus the Alaska taxpayer purchasing fuel in Alaska is not charged the additional five cents a gallon for the use by consumption of the fuel in the manner which the out-of-state purchaser is taxed. When one considers the out-of-state tax and the Alaska user tax together, discrimination against interstate commerce persists because fuel purchased outside of Alaska and consumed in Alaskan waters while in interstate or foreign commerce is subject to multiple taxation. Whereas fuel sold to vessels in Alaska is taxed only once. Montgomery Ward & Co. v. State Board of Equalization, 272 Cal.App.2d 728, 78 Cal Rptr 373, 391-394 (1969) cert. denied 396 U.S. 1040 (1970). The reason for the unequal treatment of non-resident taxpayers is the application of the Alaska user tax placed upon fuel which they purchase out of Alaska.

A similar situation, although not involving a fuel tax, was found unconstitutional in Armco, Inc. v. Hardesty, 81 L.Ed.2d 546, 104 S.Ct. 2620 (1984) where the U.S. Supreme court voided a West Virginia tax on out-of-state wholesalers doing business in

West Virginia which was not imposed on resident wholesalers. The discriminatory treatment was evident when the West Virginia tax was added to taxes of the home states of the non-resident wholesalers resulting in the cumulative burden not imposed on West Virginia residents:

"If Ohio or any of the other 48 States imposes a like tax on its manufacturers - which they have every right to do - then Armco and others from out-of-state will pay both a manufacturing tax and a wholesale tax while sellers resident in West Virginia will pay only the manufacturing tax."

31 L.Ed.2d at 546. The court in Armco at 545 also held:

"[i]t long has been established that the Commerce Clause of its own force protects free trade among the states. *** That is, a State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State".

As applied by the Audit Division the Alaska tax appears to have just this effect. The tax provides that two vessels traveling through Alaskan waters will be treated differently by the state depending on whether the taxpayer purchases its fuel in Alaska or outside of it. For Alaska tax purposes fuel purchased out of Alaska and subject to the user tax will be treated the same as fuel purchased in Alaska, subject to the fuel sales tax, only when the non-resident purchaser pays no tax on its out-of-state purchase. With other states and scores of foreign countries, like Alaska having power to tax the sale of fuel within their own jurisdictions, non-Alaska purchases do not receive equal tax treatment by Alaska because of its user tax, which is added onto any other out-of-state taxes.

The effect of this tax is to promote in an unconstitutional manner the local sale of fuel to vessels operating in Alaskan waters and other intrastate commerce by discriminating against interstate and foreign commerce with multiple taxation of the same event. See Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 79 S.Ct. 357, 3 L.Ed.2d 421, 427 (1959). This tax policy provides a direct commercial advantage to local fuel businesses and resident vessels at the expense of out-of-state fuel dealers as well as non-resident vessels which purchase their fuel out-of-state, resulting in the destruction of the free trade which the Commerce Clause protects. Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318, 97 S.Ct. 599, 50 L.Ed.2d 514 at 528 (1977), Maryland v. Louisiana, 451 U.S. 725, 101 S.Ct. 2114, 68 L.Ed.2d 576, 600-604 (1981), Halliburton Oil Well Company v. Reily, 373 U.S. 64, 83 S.Ct. 1201, 10 L.Ed.2d 202 at 208 (1963), National Meat Ass'n v. Deukmejian, 743 F.2d 656, 659, 661 (9th Cir. 1984).

A state "may no more use discriminatory taxes to assure that non-residents direct their commerce to businesses within the state than to assure that residents trade only in intrastate commerce." Boston Stock Exchange, at 50 L.Ed.2d 527. Furthermore, a state may not tax in a manner that discriminates between two types of interstate transactions in order to favor local commercial interest over out-of-state businesses. Id. at 528.

Taken to its logical conclusion, Alaska's application of the user fuel tax if employed by other states would have an even greater burdensome effect on interstate and foreign commerce than

now exists - exactly what the Commerce Clause is intended to prevent. The Supreme Court in Freeman v. Hewit, 329 U.S. 249, 67 S.Ct. 274, 91 L.Ed. 265, 274 (1946) stated "[i]f another state has taxed the same interstate transaction, the burdensome consequences to interstate trade are undeniable." Fortunately for purposes of interstate commerce other states have expressly rejected the Audit Division's position of imposing a tax on fuel purchased out-of-state by non-residents and consumed in propulsion of vessels, aircraft or motor vehicles, thereby eliminating the possibility of multiple taxation of the same event. For example, Washington's Administrative Code § 458-20-175 specifically excludes taxing any part of consumable goods, including bunker fuel, which is used on watercraft in Washington but was placed aboard outside the state. California has a similar regulation, Revenue and Taxation § 1620(b)(2)(B) which prevents the application of its use tax to fuel purchased for use and used in interstate or foreign commerce prior to its entry into California and thereafter used continuously in such commerce both within and without California and not exclusively in California. Likewise, Oregon does not tax bunker fuel purchased out-of-state and consumed while propelling a vessel in interstate or foreign commerce within the state. Significantly under both statute and regulation, fuel brought into Oregon in the fuel tank of a truck, aircraft or other vehicle and ultimately used only as fuel for propulsion of the vehicle or aircraft is not taxed, see § 319.260, OR AD Rule 735-11-005(5). Hawaii by statute, Chapter 233 Use Tax Law, prohibits taxing the use of goods imported into

the state by the owner of a vessel engaged in interstate or foreign commerce and held for and used only as ship stores for the vessel. See § 238-1(4). Bunker fuel is considered by the Hawaii Department of Taxation to be part of ship stores.

Finally, the Supreme court in Armco, supra, held that the taxpayer is not required to prove actual discriminatory impact on it by pointing to states that impose similar taxes which would result in a total burden higher than that imposed by the subject state. At 81 L.Ed.2d 546-547. Thus, the taxpayers herein do not need to prove that other states tax the entire amount of fuel sold there to vessels regardless of where they may sail. However, Hawaii does, General Excise Tax Chapter 237, and California taxes the amount of fuel sold which is consumed to the first out-of-state destination, Revenue and Taxation Code, Section 6385(b), (c) and Revenue and Taxation Regulation, Section 1621(c). Thus, fuel taxed in Hawaii upon its sale is also taxed in Alaska when a ship reaches Alaskan waters and fuel taxed in California is again taxed when Alaska is the first destination point for the vessel.

(b) APPORTIONMENT

Another requirement of Complete Auto Transit is that the state tax must be fairly apportioned. The only apportionment, if any at all, which Alaska attempts is not to tax fuel consumed outside its territorial waters. That policy by itself does not alleviate the problem of multiple taxation for fuel consumed within its waters which has been taxed previously by another state which sold the fuel.

(c) TAX IS NOT FAIRLY RELATED TO SERVICES

This prong of the Complete Auto Transit test, explained in Commonwealth Edison Co. v. Montana, 453 U.S. 609, 101 S.Ct. 2946, 69 L.Ed.2d 384, 900 (1981) as meaning that the "measure" of the tax must be reasonably related to the extent of the contact between a taxpayer and the state, since it is the activities or presence of the taxpayer in the state that may be made to bear a just share of the tax. The incidence of the tax as well as its measure must be tied to the earnings which the state made possible. At 69 L.Ed.2d 902 the court continued by stating that when the measure of a tax bears no relationship to the taxpayers' presence or activity in the state then the tax is an undue burden on interstate commerce.

The Alaska tax does not meet the requirements of this prong. The tax is imposed merely if the ship is sailing in Alaskan waters. It is imposed even if the vessel has no other activities in Alaska. A vessel traveling in Alaskan waters which does no business and makes no stops at any port or location there and has no earnings from the state is still subject to the tax. In such a situation, neither the incidence nor measure of the tax is fairly related to any services provided by the state.

Furthermore, those vessels which do stop at ports in Alaska already pay substantial fees and taxes to the various ports and harbor authorities for use of harbor facilities. Payments of fees and taxes for the use of such facilities or for fuel purchased in Alaska or imported for storage and later use there admittedly are fairly related to services provided by the state.

But the state offers no comparable services to vessels in transit whether or not bound to or from Alaskan points which would justify a tax on the amount of fuel consumed for motive power which was purchased elsewhere. See Midwestern Gas, supra.

B. DENIAL OF EQUAL PROTECTION

As shown above, the Alaska tax discriminates in favor of in-state purchasers and against out-of-state ones by adding five cents a gallon on each gallon of out-of-state fuel consumed in Alaskan waters. The Alaska statute fails to provide a credit for taxes paid to other states. The U.S. Supreme Court in Williams v. Vermont, 472 U.S. ___, 105 S.Ct. ___, 86 L.Ed.2d 11 (1985) declined to determine whether a state constitutionally is required to provide such a credit. It did cite Montgomery Ward and Company v. State Board of Equalization, supra, which held that such a requirement does exist. However the Supreme Court's comments in Williams v. Vermont and other cases demonstrate that the Alaska Motor Fuel Tax as applied by the Department of Revenue does not pass scrutiny. Although the Alaska tax is a motor fuel tax, its principle features include a tax on the sale or transfer of fuel within the state and a tax on fuel purchased out of state and shipped into the state for personal use. In effect, there exists a sales tax and a complementary use tax on motor fuel.

The Supreme Court in National Geographic, supra, at 51 L.Ed.2d 636 explained such taxes in the following manner:

"All states that impose sales taxes also impose a corollary use tax on tangible property bought out-of-state to protect sales tax revenues and put local retailers subject to the sales tax on a competitive parity with out-of-state retailers exempt from the sales tax."

The court also commented on sales and use taxes in Boston Stock Exchange, supra, at 50 L.Ed.2d 520 where it stated:

"In all the use-tax cases, an individual faced with the choice of an in State or out of State purchase could make that choice without regard to the tax consequences. If he purchased in State, he paid a sales tax; if he purchased out of State but carried the article back for use in State, he paid a use tax on the same amount. The taxes treated both transactions in the same manner."

Most recently the court said in Williams v. Vermont, at 86 L.Ed.2d 19 ". . . the use tax base cannot be broader than the sales tax base," The Alaska Motor Fuel User Tax is, as the Vermont tax was, over-inclusive because it applies to fuel purchased by non-residents and taxed by other states. The Alaska user tax, like Vermont's, exceeds the usual justification for such a tax. That justification is that it exists only to compensate equally a state for its lost sales. The court in Williams v. Vermont, at 86 L.Ed.2d 20 stated:

"This customary rationale for the use tax has no application to purchases made out-of-State by those who were not residents of the taxing State at the time of purchase. These home-state transactions cannot be seen as lost Vermont sales, and are certainly not ones lost as a result of Vermont's sales tax."

Likewise, imposition of the Alaska use tax on non-residents who purchase their fuel out-of-state cannot be seen as a justification for lost Alaska sales. Alaska's user tax goes too far because its base is broader than the sales tax base, i.e. it taxes out-of-state fuel purchases by non-residents. It does not limit the tax to Alaska residents who purchase non-taxed fuel in other states and bring it into Alaska for subsequent use. This

tax results in an unequal treatment of non-resident vessel operators and is in violation of the Equal Protection Clause of the Fourteenth Amendment.

C. STATUTORY INTERPRETATION

The statute by its terms applies only to fuel "consumed by a user". As relevant hereto, "user" is defined as "a person consuming or using motor fuel, who . . . purchases the fuel out of the state and ships it into the state for personal use in the state." AS 43.40.100(4)(A). "To ship" means "to deliver to a carrier (public or private) for transportation", Black's Law Dictionary, 1234 (5th Edition 1979). "Transportation" is defined in 49 USC § 10102(23)(A) as including a " . . . vessel . . . related to the movement of passengers or property or both," Alaska law is consistent with the definition "to ship", AS §§ 45.02.319(a)(1), 504(a), 509(a). By viewing consumption of the fuel to be the sole requirement which invokes the application of the tax, the Audit Division's interpretation ignores the "ships it into the State" portion of the statute. However, the use of the wording by the legislature was not superfluous. Every word in a statute has meaning and a purpose. Alaska Transp. Com'n. v. Airpac, Inc., 685 P.2d 1248, 1253 (Alaska 1984). The tax therefore applies only to fuel both "consumed" and "shipped", i.e. transported as cargo, into the state, not fuel merely consumed in state waters.

In its letter of June 10, 1985 the Audit Division stated "every user is required to remit a tax accrued on motor fuel imported into the State and used during each month." [Emphasis

added]. Thus, the Division has determined that fuel which is consumed in propelling a vessel in interstate or foreign commerce is considered an import once it reaches Alaskan waters. The U.S. Supreme Court has clearly rejected such an interpretation in Swan & Finch Company v. United States, 190 U.S. 143, 47 L.Ed. 984, 986 (1903), wherein it ruled that lubricating oil placed on board vessels as cargo was considered an "export" but the same types of oil which were placed on board for use and consumed on the vessels during the same voyages could not be deemed exported. The reasoning in Swan & Finch would apply here as well. Fuel consumed in a voyage to Alaska could neither be considered an export by one state or nation nor an import by Alaska because it is not cargo. It can not be said that the fuel consumed during the voyage was "shipped" (imported or exported) to Alaska.

The obvious purpose of the statute is to prevent an Alaska resident from purchasing non-taxed fuel outside of the state and then bringing it into Alaska and storing it for future use, thereby avoiding the Alaska Motor Fuel Tax. The purpose is not to tax fuel consumed which provides the motive power of a vehicle, vessel, or aircraft which has taken fuel on outside Alaska and thereafter enters Alaska as part of an interstate or foreign journey.

Because of the foregoing reasons there is considerable doubt as to the interpretation of the statute employed by the Department of Revenue. The U.S. Supreme Court in Hasset v. Welch, 303 U.S. 303, 314, 82 L.Ed. 858, 867 (1938) and the Alaska Supreme Court in Union Oil Co. of California v. Department of Revenue,

560 P.2d 21, 23 (Alaska 1977) have declared if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer.

D. STATUTE NOT INTENDED TO APPLY TO MERE CONSUMPTION

When the statute was enacted in 1949, states were clearly prohibited from taxing mere consumption of fuel by vessels in interstate commerce, Helson v. Kentucky, supra. As noted above Helson was affirmed in 1973 in United Airlines, Inc. v. Mahin, supra, where it found valid reasons to prohibit taxes on mere consumption of fuel. The Alaska Motor Fuel Tax statute when enacted in 1949 must have been intended to be within these constitutional limits. Therefore, the tax cannot have been intended to apply to mere consumption of fuel in Alaskan waters, and must have been intended to apply to fuel both stored and consumed in Alaska.

E. THE DEPARTMENT HAS VIOLATED THE ALASKA ADMINISTRATIVE PROCEDURE ACT

The Department's interpretation and application of the statute violates the Alaska Administrative Procedure Act, AS 44.62.010 through 44.62.650. The Department's interpretation and instructions to taxpayers, including its letter of June 10, 1985, constitute a "regulation" under AS 44.62. 640(3), Kenai Pen. Fisherman's Co-op Ass'n v. State, 628 P.2d 997, 904-906 (Alaska 1981). The Department's regulation as constituted by the letter announcing the policy of taxing previously un-taxed fuel consumed in propelling the vessels in question was not adopted in accordance with the procedures set forth in AS 44.62.180 through

44.62.290. Further, it was not submitted, filed and published in accordance with the procedures set forth in AS 44.623.040 through 44.62.170. Because the regulation was not adopted properly it is invalid for not following the APA procedures, Coghill v. Boucher, 511 P.2d 1297, 1304-1305 (Alaska 1972).

Because the agency does not have power on its own to adopt, administer or enforce a regulation, the Department's action is unauthorized under AS 44.62.020. Whereas the Department has interpreted the provisions of the motor fuel tax inconsistently with the language and intent of the act, the Department's actions are invalid and of no effect per AS 44.62.030.

Even assuming a regulation was validly adopted by the Department, it would have prospective effect only, and could not be applied retroactively because the Department's previous interpretation of the statute is inconsistent with its present interpretation, AS 44.62.240. Furthermore, retroactive application of the Department's novel interpretation of the statute, adopted without notice or opportunity to comment, would violate procedural due process rights as required by the Fourteenth Amendment.

F. ECONOMIC IMPLICATIONS OF THE TAX

The tax would eliminate jobs in the cruise ship and tourism industries in Alaska. By driving up the cost of operating a cruise ship, the tax would force operators to raise their prices and so fewer visitors would vacation in Alaska. Alaskans would lose the money that the visitors spend and the jobs in restaurants and shops that the visitors frequent.

The cost of the tax will have to be passed on to consumers, which will result in higher prices for everything that Alaskans buy. Many carriers are already losing money and cannot absorb any additional costs and remain viable competitors.

The tax discriminates against the Port of Anchorage. Because the tax applies to fuel consumed in Alaskan waters, and because the approach to Anchorage through Cook Inlet passes through more Alaskan waters than, for example, the approach to Seward, the tax makes it more expensive for a vessel to call at Anchorage than to call at another port.

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September 9, 1985

Hon. Mary A. Nordale
Commissioner of Revenue
Department of Revenue
Pouch SE
Juneau, Alaska 99811

Re: Motor Fuel Tax

Dear Commissioner Nordale:

The purpose of this letter is to present, on behalf of the Alaska Oil and Gas Association ("AOGA"), the oil industry's views on the applicability of the motor fuel tax to tanker operations in Alaskan waters. For the reasons set forth below, AOGA believes that the position of the Audit Division of the Department of Revenue overstates the reach of the motor fuel tax. We appreciate this opportunity to present our views and hope that the Department will reconsider the Audit Division's position in light of the factors discussed in this letter.

Alaska imposes a tax on transfers of motor fuel and on consumption of motor fuel by statutorily defined "users". Alaska Stat. § 43.40.010 (1983). "User" is defined as follows:

(4) "user" means a person consuming or using motor fuel, who either

(A) purchases the fuel out of the state and ships it into the state for personal use in the state;

(B) manufactures the fuel in the state; or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010.

Alaska Stat. § 43.40.100(4)(A) (1983). (Emphasis added.)

The Audit Division's position that liability as a "user" is triggered by consumption in Alaska of fuel purchased outside the state and carried into Alaska in vessel fuel tanks ("fuel-tank fuel") rests on its interpretation of Alaska Stat. § 43.40.100(4)(A) (1983).

Hon. Mary A. Nordale
September 9, 1985
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Specifically, the Audit Division construes the phrase "ships . . . into" the state as equivalent to "carried into" the state. The Association believes the correct construction of the "ships into" language is "transported as cargo into" the state. The difference this distinction makes is that consumption in Alaska of fuel-tank fuel purchased outside the state does not trigger "user" status under the "transport as cargo" interpretation.

The Association's interpretation of Alaska Stat. § 43.40.100(4) (A) is supported by four principles of statutory construction. First, the Alaska Supreme Court has held that every word, sentence or provision in a statute has a useful purpose, with force and effect of its own, and that no superfluous words or provisions are used. Alaska Transp. Com'n. v. Airpac, Inc., 685 P.2d 1248, 1253 (Alaska 1984). It follows that the "ships into" language must add something to the "user" definition; the meaning of Alaska Stat. § 43.40.100(4)(A) has to be different from the meaning it would have had if the legislature had omitted the "ships into" requirement.

The Audit Division's interpretation of "ships into" as equivalent to "carries into" renders the "ships into" language superfluous; in practice, the "user" definition would remain unchanged if the "ships into" language were eliminated. A tax on imported fuel "carried into" the state and consumed there would reach the same fuel as a tax on all imported fuel consumed in the state, whether or not a "shipment" occurred. In contrast, a tax on imported fuel "transported as cargo" into the state and consumed there would not reach imported fuel consumed on interstate voyages. Thus, construction of the "ships into" language as a requirement that the fuel be "transported as cargo" into Alaska gives independent meaning to each word and phrase in the statute, unlike the construction adopted by the Audit Division.

Second, the Alaska courts construe words within statutes in accordance with their common meaning unless a peculiar meaning has arisen through statutory definition or judicial construction. State, Department of Rev. v. Debenham Electric Supply Co., 612 P.2d 1001, 1002 (Alaska 1980). The dictionary definition of the verb "to ship" is: "to place goods on board a vessel for the purchaser or consignee, to be transported at his risk." BLACK'S LAW DICTIONARY 1234 (5th Ed. 1979). "Transportation" is the movement of goods or persons from one place to another, by a carrier. Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 203 (1881). The terms "to ship" and "shipment" as used in Alaska's Uniform Commercial Code have precisely this meaning. See Alaska Stat. §§ 45.02.319(a)(1), .504(a), .509(a) (1980). "Shipment" of a commodity implies that the entire volume tendered for transportation will be delivered to the consignee at the destination. Since the common meaning of the verb

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"to ship" is "to transport as cargo," and no contrary definition is provided in the motor fuel tax statute, fuel taxable under Alaska Stat. 43.40.100(4)(A) must be transported as cargo.

Third, the enforcement problems inherent in the Audit Division's interpretation are strong evidence of the legislature's intention not to impose the motor fuel tax on fuel-tank fuel. Under the Audit Division's interpretation, the tax would apply on its face to fuel-tank fuel of trucks and automobiles entering the state. Enforcement of a tax on fuel-tank fuel against marine shipping, but not against motor vehicle users, would constitute "a deliberate and intentional plan to discriminate" in violation of the Equal Protection clauses of the Alaska and United States Constitutions. State v. Reefer King Co., 559 P.2d 56, 65 (Alaska 1976), modified on other grounds, 565 P.2d 702 (Alaska 1977). However, it is apparent that nondiscriminatory enforcement of the Audit Division interpretation would, in practice, be extremely burdensome. Under Union Oil Company of California v. Department of Revenue, 560 P.2d 21, 24 (Alaska 1977), the courts consider the implications of collection procedures in reviewing the Department's interpretation of tax statutes. The enforcement problems inherent in the Audit Division's position would weigh heavily against its interpretation.

Fourth, as applied by the Audit Division, the motor fuel tax discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution. The tax on motor fuel consumption is a form of "compensating" use tax since, in contrast to a stand-alone consumption tax, in-state consumption is taxed only if the underlying purchase escaped tax under Alaska Stat. § 43.40.010(a). Compensating use taxes burden only use or consumption of items or commodities that have moved in interstate commerce. Such taxes have withstood challenge under the Commerce Clause only because they have been analyzed as components of a unified sales and use tax scheme which placed out-of-state and in-state sellers on an even footing. Henneford v. Silas Mason Co., 300 U.S. 577 (1937). However, if no use tax credit is granted for sales taxes paid in the state of purchase, a sales and use tax scheme benefits in-state sellers at the expense of out-of-state sellers by exposing interstate transactions to double taxation. Montgomery Ward v. State Board of Equalization, 78 Cal. Rptr. 373, 394 (Cal. App. 1969) cert. denied, 396 U.S. 1040 (1970) (invalidating under Commerce Clause a provision of California use tax that failed to extend credit for sales tax paid other states).

The motor fuel tax provides no credit for sales taxes imposed on motor fuel in the state of sale. As a result, fuel-tank fuel consumed in Alaska is subject to tax once when purchased in Alaska but twice when purchased outside the state. This is precisely the

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result prohibited by the United States Supreme Court in Armco, Inc. v. Hardesty, 104 S.Ct. 2620 (1984), reh'g denied, 105 S.Ct. 285 (1984) when it held that states "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the state."

Armco put to rest the argument that taxpayers arguing discrimination must prove actual multiple taxation. The Court noted that "taxes must have what might be called internal consistency -- that is, the [tax] must be such that, if applied by every jurisdiction, 'there would be no impermissible interference with free trade.'" Armco, 104 S. Ct. at 2624, quoting Container Corp. of America v. Franchise Tax Board 463 U.S. 159. If the Audit Division's interpretation of the motor fuel tax were applied by California, all bunkers purchased in California would be taxed at five cents per gallon and the portion of those bunkers consumed in Alaska would be taxed an additional five cents per gallon. In contrast, bunkers purchased and consumed in Alaska would be taxed at only five cents per gallon. It follows that the motor fuel tax, at least under the Audit Division's interpretation, discriminates against interstate commerce in violation of the Commerce Clause.

Moreover, under the same analysis, imposition of the tax on fuel-tank fuel purchased outside the United States and consumed by tankers engaged in international commerce (specifically, the transportation of LNG to Japan) would pose the "enhanced risk of multiple taxation" expressly prohibited by Japan Lines, Ltd. v. County of Los Angeles, 441 U.S. 434, 446 (1979).

Finally, where possible, doubts concerning the construction of tax statutes should be resolved in the taxpayer's favor. Union Oil Company of California v. Department of Revenue, 560 P.2d 21, 23 (Alaska, 1977). In light of the analysis set forth above, this general rule of construction applicable to tax statutes requires rejection of the Audit Division's interpretation.

In summary, Alaska Stat. § 43.40.100(A)(4) (1983) does not authorize the Department to impose motor fuel tax on fuel-tank fuel purchased outside the state. The Audit Division's contrary position renders an entire phrase of the statute superfluous, construes the verb "to ship" contrary to its common meaning and would, in practice, make the tax unconstitutional in operation under the Equal Protection and Commerce Clauses of the United States Constitution. Given the conflict between this analysis and the Audit Division's position, the requirement that doubts concerning the construction of tax statutes be resolved in favor of taxpayers is necessarily applicable.

Hon. Mary A. Nordale
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We appreciate the opportunity to have presented our views on this issue. We would like to discuss this matter further with the Department, hopefully prior to the October 1 filing deadline.

Very truly yours,

A handwritten signature in dark ink, appearing to read "E. W. Tanner" followed by a flourish that looks like a slanted line with a hook.

E. W. Tanner
Chairman, Tax Committee
Alaska Oil and Gas Association

EWT/BMG:sma(klr)/pb
2748A
0264t

cc: Bruce Botelho, Deputy Commissioner
Martin Richards, Director, Audit Division

WILLIAM H. GRADY
ATTORNEY AT LAW
1805 NORTON BUILDING
SEATTLE, WASHINGTON 98104

(206) 422-4087

WILLIAM H. GRADY

DAVID M. DELUCA
JOHN S. FORDERHASE

August 15, 1985

Mr. Bill Lawrence
Transportation Institute
717 West Dravus
Seattle, WA 98119

Re: Alaska Motor Fuel Tax

Dear Bill:

I gathered the following information concerning taxes on fuel by several different states. As you know, each state has its own taxing scheme with some states applying sales and use taxes while others employ motor fuel taxes. This letter does not represent the final word as to the status of taxes in each state. In some instances I did not have access to administrative regulations which enhance the wording of the governing statutes. Also, I don't know what the actual tax rates are for the various states which Governor Sheffield claims to be in his letter. Possibly a few telephone calls from you to your connections in the industry can fill these information gaps as to the how the statutes and regulations are actually administered in the field. I have included New York in the sampling because the Exxon attorney in Anchorage suggested to me that New York has been administering its tax laws on fuel similar to the manner of Alaska. After reviewing it, I think the New York tax can be distinguished.

WASHINGTON: Department of Licensing Fuel Tax Division, Olympia (Richard Dietrich 753-5575). The department applies the sales tax RCW 92.08.020 to the sale of bunker fuel. The complementary use tax for fuel is governed by RCW 82.12.020. The applicable regulation is WAC 458-20-175. For bunker fuel which is sold in Washington and delivered on board an interstate or foreign commerce carrier for consumption while both within and without territorial boundaries of Washington, the amount of use tax imposed is applicable only to that portion of the fuel sold which will be consumed in Washington.

The significant difference in the administration of the use tax by Washington and the motor fuel tax by Alaska is contained in the Washington use tax regulation concerning "consumable goods" which includes "bunker fuel": "The tax does not apply upon the use within this state of any part of consumable goods for use on carrier property and placed aboard outside this state." The term "carrier property" includes "water craft" in its meaning.

Finally the Washington Business and Occupation Tax RCW 82.04 as you know, has a new exemption effective July 1, 1985 per S.B. 4228: "In computing tax there may be deducted from the measure of tax amounts derived from sales of fuel for consumption outside the territorial waters of the United States by vessels used primarily in foreign commerce."

CALIFORNIA: Section 6385 Revenue and Taxation Code was recently amended by S.B. 310. The bill, apparently enacted, exempts from the sales and use tax the gross receipts from the

sale of fuel to a water common carrier engaged in interstate or foreign commerce for immediate shipment outside California for consumption, not storage, in the conduct of its business after the first out of state destination is reached. The supporting sales tax regulation 1621(c) contains the same theme that tax on fuel sold in California to vessels is applicable only to the first destination outside of California. Its complementary use tax regulation 1620(b)(2)(B), like Washington, differs significantly from Alaska's administration of its motor fuel tax. The California regulation states:

Use tax does not apply to property purchased for use and used in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California.

It would appear by this regulation that California does not tax fuel used for propulsion purchased out of state and used in interstate and foreign commerce. You mentioned that California may grant a credit to fuel brought into the state in a vessel's tank. It would probably be helpful if we talked with Michael Murphy to clarify the practices used there.

OREGON: The tax status here is not entirely certain to me. Possibly a phone call would help to clarify the matter of whether there is a tax on bunker fuel or not. I talked with the Department of Revenue. The person there was not aware of such a tax. She suggested that I talk to the State Marine Board which in turn disclaimed any knowledge of and connection to tax collection and vessel fuel. I next tried the motor vehicle division, fuels tax branch, which administers taxes on motor vehicle and aircraft

fuel but not on vessel fuel. The fellow there was unaware of which department, if any, would control that area.

Oregon does not have a general sales tax. It does have a motor vehicle and aircraft fuel tax, Section 319.020 et seq. and supporting administrative rules 735-11-005 et seq. and 735-12-010 et seq. Significantly under both statute and regulation, fuel brought into Oregon in the fuel tank of a truck, aircraft or other vehicle and ultimately used only as fuel for propulsion of the vehicle or aircraft is not taxed. See Section 319.260, OR AD rules 735-11-005(5). Also a refund is available if the fuel for a motor vehicle is used in another state and the user is required to pay other additional taxes on the same fuel. 735-11-706(3), 735-12-041(1)(a). The aircraft fuel use tax is refundable only if the aircraft flies directly from Oregon to a foreign country with no stops in other states. Section 735-11-706(3).

HAWAII: At this time I do not have complete information on Hawaii. A telephone call to your sources might be helpful as to how that state administers its taxes. I wrote a letter to the tax collector with questions concerning the administration of tax laws for vessel fuel and requested a copy of tax regulations. Talking by telephone to them was not much help. I was told that fuel that was sold in their foreign trade zone is not taxed. I do not know if that is accurate, or if it is, whether interstate vessel fuel sold is also exempt or if it is taxable under the following statute.

Hawaii does have a fuel tax law applying license taxes, Chapter 243 et seq., governing the sale of diesel fuel at one

cent per gallon, aviation fuel at one cent per gallon and liquid fuel other than diesel and aviation fuel which is taxed at a higher rate, Section 243-4. I do not know whether bunker fuel is considered to be a liquid fuel other than diesel and aviation fuel and therefore taxed. The statute does have a disclaimer to taxation of sales of fuel in Section 243-7 where it states that ". . . the payment of license fees shall not be held or construed to apply to fuel imported into the State in interstate or foreign commerce while and so long as such fuel is beyond the taxing power of the State,"

More importantly, Hawaii also has a use tax law, Chapter 238, subjecting imports to a use tax. However Section 238-3, also disclaiming any right to tax property or its use which cannot legally be taxed by federal law, credits the taxpayer for out of state taxes paid on property:

"(i) Each taxpayer liable for the tax imposed by this Chapter on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same transaction and property to another state. . . ."

Section 238-1 defining terms in the use tax law for imposition of the tax significantly states that the term "use" shall not include:

"(4) Use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for the vessels."

The statute does not define "ship stores". However the U.S. Supreme Court in a New York tax case McGoldrick v. Gulf Oil Company, 84 L.Ed. 840, 845 (1939) defined bunker fuel oil as

"ships' stores for consumption as fuel in propelling [vessels]" Assuming that the term ship stores in the industry also includes bunker fuel it appears that Hawaii by statute expressly rejects Alaska's method of taxing bunker fuel which is used in propelling the vessels where that fuel was purchased out of state. This interpretation may become more certain if and when we receive a response from the Hawaii tax collector.

NEW YORK: This State does have a sales tax, Article 28 Section 1105 and a use tax, Section 1110. However Section 1115(a)(8) states that use and sale of fuel for interstate and foreign vessels are exempt from the sale and use taxes. New York also has a motor fuel tax, Article 12-A Section 282 which provides, like Oregon, that motor fuel brought into the state in the ordinary fuel tank of a motor vehicle, motor boat, aeroplane, or other conveyance propelled by use of motor fuel and to be used only in operation thereof is not deemed imported for tax purposes. New York, however, does not refund taxes paid on motor fuel or diesel motor fuel taken out of New York in a fuel tank connected with an engine of the motor vehicle and consumed outside of New York.

New York also has a gross receipts tax on the petroleum business. Article 13-A Section 300 et seq. Exxon naturally is concerned with this because it is in the petroleum business. An annual tax is imposed (1) upon the gross receipts of every petroleum business from sales of petroleum where shipments are made to points within the state and (2) upon the consideration given by said business for petroleum which is imported into the state for

consumption by it in the state (Section 301). A notable exception is that petroleum brought into the state in the ordinary fuel tank of a motor vehicle used to propel the vehicle is not deemed imported for consumption in the state. Section 300(c). The statute does not state whether motor vehicle also includes airplanes or vessels.

Section 303(c)(3) does provide that aviation fuel imported into New York for consideration and consumed in the state during intrastate flights and during the take-off portion of interstate and foreign flights is taxable. But, where only the point of arrival of the flight involves New York or where a flight neither lands in nor departs from New York then none of the fuel consumed during such a flight is treated as consumed in New York.

I do not have regulations supporting this statute but it appears that New York is merely taxing the petroleum business for fuel which it sells for importation into New York and that which the petroleum business purchases for importation into New York to be consumed there. I think the tax can be distinguished first of all because the shipping lines are not in the petroleum business. Second, the dispute in Alaska does not involve fuel imported there in the conventional sense of storage, withdrawal for later use, or sale of it as the New York gross receipts tax on the petroleum business would seem to apply. Third, fuel purchased out of state and used in the vehicle solely for motive power within New York is exempt from taxation. Arguably this exemption would extend to vessels as well as motor vehicles.

Thus far I have not found any state which is interpreting its tax laws as Alaska is. As noted above, several of the states are expressly rejecting the imposition of a tax on fuel consumed in their waters while part of an interstate or foreign movement.

Very truly yours,

David

David M. De Luca

DMD/lm

COMMITTEE REPORT
SENATE

FURTHER:

2/26/86

Date _____

Mr. President

The Committee on FINANCE considered SB 388
relating to the chronically mentally ill.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

COMMITTEE REPORT

SENATE

FURTHER:

FINANCE

2/7/86

Date 2-25-86

Mr. President

The Committee on HESS considered SB 388 relating to the chronically mentally ill.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- [X] do pass
[] do pass with attached amendment(s)
[X] replace with/or adopt CS for SB 388 (HESS)
[] new title
[X] same title and recommends Do PASS
[] and attached a "LETTER OF INTENT" [] NEW FISCAL NOTE
[] reports it back without recommendation
[] recommends referral to Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS

Joe P. Josephson
Allis Sturgulewski
Edna McVie

George Fahrenberg Do Pass
Chairman

Chairman recommendation

Offered: 2/26/86
Referred: Finance

Original sponsor: Fahrenkamp

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 388 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the chronically mentally ill."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 47.30 is amended by adding new sections to read:

9 Sec. 47.30.545. TREATMENT OF THE CHRONICALLY MENTALLY ILL. The
10 department shall provide for community based and locally or regionally
11 coordinated care and treatment of the chronically mentally ill.

12 Sec. 47.30.547. COMMUNITY SUPPORT SERVICES FOR THE CHRONICALLY
13 MENTALLY ILL. Communities that provide eligible mental health ser-
14 vices for the chronically mentally ill may receive funds from the
15 department for the following program elements:

16 (1) a short-term residential treatment program for indivi-
17 duals experiencing an acute episode or a situational crisis requiring
18 temporary removal from their home environment;

19 (2) a long-term residential treatment program with a full
20 day treatment component for persons who require intensive support;

21 (3) a transitional residential treatment program designed
22 for persons who are able to take part in programs in the general
23 community, but who without continued support would be at risk of
24 returning to a hospital;

25 (4) a semi-supervised, independent, but structured living
26 arrangement for persons who without some support and structure would
27 be at risk of returning to the hospital;

28 (5) a day treatment program capable of providing services
29 for clients whose residential needs are being met but who require
30

1 additional or extended treatment services;

2 (6) supported work and vocational training programs that
3 provide opportunities for clients to experience the benefits of mean-
4 ingful and productive work experiences with graduated levels of skill
5 and energy required;

6 (7) socialization centers designed to serve a broad range
7 of clients, as well as persons living in the community in general.

8 Sec. 47.30.548. STANDARDS FOR COMMUNITY SUPPORT SERVICES FOR THE
9 CHRONICALLY MENTALLY ILL. Communities providing mental health ser-
10 vices for the chronically mentally ill shall meet and maintain the
11 following treatment standards:

12 (1) facilities shall consist of small residential or day
13 treatment centers, in as close to a normal home or non-institutional
14 environment as possible without sacrificing client safety or care;

15 (2) staffing patterns shall reflect the cultural, linguis-
16 tic, and other social characteristics of the community, and shall
17 incorporate multidisciplinary professional staff to meet client diag-
18 nostic and treatment needs;

19 (3) programs shall be designed to encourage self-sufficient
20 and independent functioning through prevocational and vocational
21 training;

22 (4) programs shall promote client participation in plan-
23 ning, operating, and evaluating daily treatment and rehabilitation;

24 (5) programs shall be designed to coordinate with the
25 social service system as a whole and in particular shall be designed
26 to include the following three elements:

27 (A) emergency or crisis care in an emergency center or
28 at home by an emergency response team;

29 (B) an acute hospital for evaluation, diagnosis,

1 treatment and referral for persons who are in need of acute care;
2 and

3 (C) a case management system in which the case manager
4 serves as a coordinator of the various elements of the system and
5 as an advocate for the clients in the system; all case managers
6 shall be under direct supervision of a psychiatrist, psycholo-
7 gist, or a mental health clinician with a master's degree;

8 (6) programs shall contain standards for staff training,
9 including training in community outreach services and orientation in
10 cross-cultural issues.

11 * Sec. 2. AS 47.30.550 is amended by adding a new subsection to read:

12 (b) Notwithstanding (a) of this section, the department shall
13 purchase 100 percent of the eligible costs of services provided for
14 the chronically mentally ill, subject to the availability of state
15 funds to the department for implementing AS 47.30.520 - 47.30.528.

16 * Sec. 3. AS 47.30.570 is amended to read:

17 Sec. 47.30.570. ELIGIBLE COSTS; MAINTENANCE OF LOCAL EFFORT.
18 The department shall adopt regulations specifying the types of ser-
19 vices and program costs eligible for state participation. These regu-
20 lations shall include

21 (1) a provision excluding capital expenditures as eligible
22 costs; [AND]

23 (2) a requirement that the community entity contractor or
24 applicant agrees as a condition of contract approval that it will not
25 supplant existing local fund support of community mental health ser-
26 vices with funds received under AS 47.30.520 - 47.30.528 and that it
27 will continue local funding support of community mental health ser-
28 vices, in any year in which it contracts with the department, at a
29 level that is at least equal to the local funding support in the

1 previous year;

2 (3) a provision that costs of services provided to the
3 chronically mentally ill under AS 47.30.550(b) that are payable by
4 insurance, indemnity, or other third-party may not be included as
5 eligible costs.
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Introduced: 2/7/86
Referred: Health, Education and
Social Services, and Finance

1 IN THE SENATE

BY FAIRFENKAMP

2 SENATE BILL NO. 388

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ALASKA STATE LEGISLATURE

14th Legislature ... 2nd Session

SENATE BILL NO. 388

By FAHRENKAMP

"An Act relating to the chronically mentally ill."

Introduced in the Senate ... 2/7..., 19...86

HISTORY IN THE SENATE

19 86

Read first time and referred to Committee on

27

HESS & Finance

226

Reported back with HESS recommendation that *replace w/CS, & do pass, to Finance. F.H.*

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill Resolution No. : SB 388
 Title : An act relating to the chronically mentally ill
 Sponsor : Bettve Fahrenkamp
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Div. of Mental Health & DD
 BRU : Community Mental Health Grants Institutions and Administration
 Components : Community Mental Health Grants Mental Health Administration

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		319.7	331.5	343.2	350.5	369.7
TRAVEL		39.2	40.7	42.2	43.7	45.2
CONTRACTUAL		4.2	5.0	5.2	5.4	5.6
SUPPLIES		1.3	1.4	1.5	1.6	1.7
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		9,635.0	9,001.4	10,361.0	10,744.4	11,141.9
MISCELLANEOUS						
TOTAL OPERATING		10,000.0	10,370.0	10,753.7	11,151.6	11,564.2
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND		10,000.0	10,370.0	10,753.7	11,151.6	11,564.2
FEDERAL FUNDS						
OTHER						
TOTAL		10,000.0	10,370.0	10,753.7	11,151.6	11,564.2

POSITIONS :

FULL-TIME		5	5	5	5	5
PART-TIME		(2)				
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attachments

Prepared by : Thomas R. Krantz
 Division : Mental Health & DD

Phone : 465-3370
 Date : 2/24/86

Approved by Commissioner : John R. Poy
 Agency : Health & Social Services

Date : 2/27/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

INTRODUCTION

The following discussion describes the Division's program proposal for the implementation of SP 388. The proposal calls for an augmentation of existing services as well as an expansion of new services to meet 50% of the potential need of the Chronically Mentally Ill (CMI) statewide at a cost of \$10,000,000.

Currently, 1394 chronically mentally ill persons are actively being served through the community mental health system on a statewide basis. This figure (1394) represents approximately 30% of the universe of persons at risk (5,500) and in need of services. Unfortunately, for the 1394 clients being served, the delivery system is still inadequate, piecemeal, fragmented, inaccessible and unavailable in some places, and lacks comprehensiveness. Therefore, the first level of priority is that of bringing the current system up to a basic level of services that will guarantee to every client a basic level of care to assure the maintenance of a minimum standard of protection, health and safety as well as a minimum standard of decency and dignity.

In addition, another 1300 clients would be identified from existing waiting lists and brought into the service delivery system. The basic level of services would also be available for these new clients. Thus the system would now be serving approximately 2700 clients or approximately 50% of the total population at risk.

After basic needs have been met, the service system would be expanded to provide differentiated services to meet the specific needs of clients based on diagnosed functional levels. Although the system would not be able to meet every need of a given client, a comprehensive range of services would be available to assure not only the maintenance of one's functional level, but to improve it, and perhaps achieve additional goals toward self-help and independence.

Naturally, to implement a new system, an administrative structure must be in place. Because an administrative system is already in place, our request for personnel, travel, supplies and equipment will be modest. Currently, two half-time regional administrators exist in Fairbanks and Juneau. These positions should be made fulltime.

These two positions will provide program monitoring, technical assistance, consultation and represents the Division's presence in the Northern and Southeast regions of the State.

For Anchorage and the Southcentral Region, 2 fulltime facility surveyors and one Regional Administrator are recommended. These surveyors would work out of the Anchorage Regional Office and provide coverage for Anchorage and the Southcentral, South Western and Western Regions of the State. The two regional administrators in Juneau will be taken to fulltime to assist in pre set-up of programs in those respective areas, and an additional position will be needed in Fairbanks to serve the Interior, Northern and North Western Regions of the State.

Personnel and Admin. Costs Within the
Mental Health Administration Component

1.	Juneau (Southeast Region)		
	a) M.H. Clinician IV part-time to fulltime		R-23L
	01 salary and benefits	43.7	
	02 travel	4.6	
		<u>48.3</u>	48.3
2.	Fairbanks (Northern Region)		
	a) M.H. Clinician IV part-time to fulltime		R-23L
	01 salary and benefits	50.2	
	02 travel	4.6	
		<u>54.8</u>	54.8
	b) Health facilities surveyor 1-FTE		R-18A
	01 salary and benefits	56.3	
	02 travel	8.0	
	03 contractual	.6	
	04 supplies	.1	
		<u>65.0</u>	65.0
3.	Anchorage (Southcentral Region)		
	a) Mental Health Clinician IV FTE		R-23A
	01 salary and benefits	67.8	
	02 travel	8.0	
	03 contractual	3.0	
	04 supplies	1.0	
		<u>79.8</u>	79.8
	b) health facilities surveyors 2-FTE		R-18A
	01 salary and benefits	101.7	
	02 travel	14.0	
	03 contractual	1.2	
	04 supplies	.2	
		<u>117.1</u>	117.1
	Total Administrative cost		<u>365.0</u>

PROGRAM ASSUMPTIONS

1. Every community mental health center would be given funds for a minimum service package for the chronically mentally ill. The minimum service package includes residential care and case management. A full time case manager will be available for 15 or more clients at a cost of \$36,000 per year, including benefits.

2. Residential care includes a variety of options such as transitional living center, supervised apartment living, group homes, and adult foster care. The cost will vary according to the choice of residential facility. Residential care is basic to one's well being and sense of worth and dignity.

3. Programs will experience a COLA of 3.7% annually.
4. Programs are not comprehensively funded, but they do meet basic needs as well as significant improvements toward client independence. Optimum funding for this population would approximate \$19,000,000 instead of the \$10,000,000 being recommended.
5. Not all services will be available in all communities; consequently, a client may have to travel to another site to receive all the services he/she may need.
6. In Southeast Alaska \$465,083.00 is for designated beds to be purchased in Juneau and Sitka. These will complement the designated beds available at Fairbanks for the Northern region and at Anchorage for the South Central area. This allows involuntary hospital care to be delivered in local facilities.
7. The data for this fiscal note came from the "Boston Study" a computerized data-based Statewide needs assessment of the CMI population in Alaska. Data and costs are available for the entire population in need or any portion thereof.
8. This program addresses approximately 50% of the population in need of services.

Services For The CMI Population

The services for the chronically mentally ill are divided into five major categories:

- CM: Case management which is the key to community support for the chronically mentally ill.
- RES: Residential services which include: Inpatient Hospitalization board and care, adult family care, halfway house, supervised apartments, and crisis/respice beds.
- TX: Treatment services which include: crisis, day treatment, out-patient psychotherapy, and medication management.
- RHB: Rehabilitation services which include: Training in daily living skills, socialization, pre-vocational and vocational training, and sheltered workshop experience.
- SUP: Support services which include: case management, support to the client's family, legal, recreation, and transportation.

Increment for Services for the Chronically Mentally Ill

Mental Health Center	Clients Currently Served	50% of Clients At-Risk	Description of Increment	Cost
Aleut/Prib	6	24	CM, RES, TX	38,520
Anchorage	625	1,245	CM, RES, RHB, SUP, TX	4,298,568
Aniak	3	7	CM, RES, TX	27,720
Barrow	19	40	CM, RES, TX	127,091
Bethel	92	78	CM, RES, RHB, SUP, TX	615,388
Copper Cnt.	2	10	CM, TX	18,000
Cordove	5	13	CM, RES, TX	27,720
Craig	6	13	CM, RES, TX	27,720
Dillingham	30	34	CM, RES, RHB, SUP, TX	200,670
Fairbanks	135	361	CM, RES, RHB, SUP, TX	0*
Ft. Yukon	0	7	CM	18,000
Galena	13	12	CM, RES, TX	56,520
Haines	3	10	CM, TX	18,000
Homer	28	47	CM, RES, RHB, SUP, TX	187,292
Juneau	34	159	CM, RES, RHB, SUP, TX	646,775**
Kenai	17	147	CM, RES, RHB, SUP, TX	491,164
Ketchikan	32	106	CM, RES, RHB, SUP, TX	354,517
Kodiak	58	67	CM, RES, RHB, SUP, TX	387,972
Kotz	7	33	CM, RES, TX	100,724
McGrath	9	7	CM, RES, TX	45,720
Nome	74	49	CM, RES, RHB, SUP, TX	494,986
Seward	53	49	CM, RES, TX	100,335
Sitka	30	42	CM, RES, TX	550,753**
Tanana	7	6	CM, RES, TX	27,720
Tok	16	10	CM, RES, TX	57,520
Valdez	5	18	CM, RES, TX	27,720
Wasilla	85	205	CM, RES, RHB, SUP, TX	688,967
Administration				364,928
TOTAL*	1,394	2,799		10,000,000

*A comprehensive array of services for the chronically mentally ill in the Fairbanks area is currently funded through the Division of Mental Health and Developmental Disabilities base budget.

**Funds for Juneau and Sitka for designated beds are included.

Detail of Major Categories of Service and Cost follow

Detail of Major Categories of Service and CostCase Management Services (CM)

Costs: 1 Manager/15 clients @ 36,000 Per Year

1. Case Management services :
 - a. Screening and evaluation of potential clients to determine the client's eligibility for services, and provide a fixed point of entry into the services of the community support unit;
 - b. Individualized Treatment Plans for each client accepted for services. The plan includes the client's history; an assessment of the client's personal strengths and weaknesses; and a plan of action to meet the client's basic life needs and enhance or maintain the client's level of functioning.
 - c. Assistance in applying for aid for which the client is entitled. Staff will routinely help clients secure resources such as Social Security, general assistance, vocational rehabilitation, and housing subsidies.
 - d. Assume the leadership role in coordinating services with other agencies and resources. Resources other than agencies include: landlords, employers and volunteers.
 - e. Emotional support and counseling to clients throughout the provision of all other services listed; and
 - f. Assure that clients are informed about the 24-hour per day services that are available through the community mental health program and are trained in their use.
2. Outreach services to include:
 - a. Contact with psychiatric hospital to identify appropriate clients and to offer services to potential clients. With the cooperation of the hospitals, staff will participate in hospital discharge planning; and
 - b. Contacts at the client's residence and other community settings to help the client engage in treatment.
3. Medication management to include: Coordination with the client's physician to assure that the client's medication needs are met. Program staff will routinely observe and collect observations on the client's behavior and provide ongoing feedback to the client's physician.
4. Daily structure and support to include:
 - a. The provision or arranging for skill training. Skill training will as needed include, but not be limited to, household skills, money management, personal hygiene, and self-management of medications; and
 - b. Socialization activities for clients. These activities will be provided in formal settings where clients can develop communication skills and friendships.
5. Vocational skill development to include:
 - a. Referral of clients to vocational rehabilitation services, and working with those services to develop individual programs to meet the special needs of each client.
 - b. Outreach contact to clients who are working in community settings. Staff will provide back-up support to clients and their employers.

6. Residential resource development to include:
 - a. Assisting clients to find an appropriate (e.g., safe, sanitary) living situation.
 - b. Providing independent living skill training (cooking, hygiene, etc.) in the client's residence.
 - c. The program may use program funds to pay for rent deposits and basic housing needs when no other funds are available. These funds may be considered as loans to clients and mechanisms will be established to accept reimbursement from clients.

7. Throughout the provision of community support services, staff will observe and help secure the client's rights to confidentiality and treatment with human dignity.

TREATMENT SERVICES (TX)

- | | |
|---|------------------|
| <p>1. Crisis/Emergency: These services include immediate, face-to-face 24-hour per day clinical care with the ability to admit clients to all service components of the local mental health system. Call back response to telephone emergencies must be within 15 minutes.</p> | <p>\$ 60/hr.</p> |
| <p>2. Day Treatment: The treatment services which are provided include more than conventional out-patient treatment but less than 24-hour per day care. Treatment services are delivered for a minimum of two hours per day through a structured program which is related to the client's treatment plan.</p> | <p>\$ 15/hr.</p> |
| <p>3. Out-patient psychotherapy: Therapeutic services provided on an individual or group basis according to the client's formal, written treatment plan.</p> | <p>\$ 90/hr.</p> |
| <p>4. Medication Management: The evaluation and monitoring of medications by a physician. Also the dispensing of medication by nursing staff.</p> | <p>\$130/hr.</p> |

REHABILITATION SERVICES (RHB)

- | | |
|--|------------------|
| <p>1. ADL/Socialization: A planned treatment program which focuses on self care, community survival, and social interactions.</p> | <p>\$ 15/hr.</p> |
| <p>2. Pre-vocational Training: A treatment program which focuses on the skills and behaviors necessary to begin vocational training or work experiences.</p> | <p>\$ 15/hr.</p> |
| <p>3. Sheltered Workshop: A vocational training program that provides clients with valid work experiences. The work is performed at less than competitive skill and productivity levels.</p> | <p>\$ 15/hr.</p> |

SB 388

4. Vocational Training: A training program in which the goal for all participants is the achievement of competitive employment. The program provides clients with support and specific skill training. \$ 15/hr.

SUPPORT SERVICES (SUP)

1. Case management: The case manager is aware of the client's needs and resources and provides advocacy, resource management, personal support, and treatment coordination. \$ 40/hr.

2. Support to Family: The support provided to family members and significant other by mental health system personnel. \$ 65/hr.

3. Legal: Services provided by legal or mental health professionals during the commitment process. Also included are other legal services required by clients. \$100/hr.

4. Recreation: The activities involved in the constructive use of leisure time. \$ 15/hr.

5. Transportation: The transportation services which are used by a client. These may include services supported by the Department or any other transportation system. \$ 5/hr.

POSITION PAPER
SB 388

An Act entitled: "An Act relating to the chronically mentally ill."

INTRODUCTION

Services for the chronically mentally ill population in Alaska continue to be plagued by inadequate or no programs, lack of funds for community services, continuing service fragmentation, and lack of workers to implement programs. Because of its small population, severe weather, and relatively young history, Alaska has not yet joined the rest of the nation in the severe problem of the homeless chronically mentally ill. Alaska can be grateful that it has been given a head start to plan for a situation which is inevitable.

Who are the chronically mentally ill in Alaska? By definition, a chronically mentally ill (CMI) person is one who has been officially diagnosed as having major psychiatric disorder with a documented history of chronicity and persistence, and which impairs the individual's occupational, family, social, and personal living skills. Frequently, the individual's behavior and/or circumstances are such that intervention by the State is warranted. Applying national mental health data which states that five percent of the population suffers from one or more mental disorders, Alaskan's population in need of services would be approximately 25,000. Currently about 10,000 persons are being seen in the Alaska Mental Health system - 1,200 at Alaska Psychiatric Institute (API), and 8,800 through the community mental health system.

The prevalence rate for the specific category under which the CMI falls is about one percent of the total population, or 25 percent of all mental disorders. This would suggest that there are approximately 5,500 persons in Alaska in the category of CMI.

CMI Study

During FY 86, the Division of Mental Health and Developmental Disabilities (DMHDD) compiled a scientific study (the Boston Study) of the numbers and functional categories of CMI who were receiving services within the mental health system during a specific period of the fiscal year. This study indicated that there were 1,394 CMI persons actively receiving services through the Division. The conclusion is inescapable - only about one third of the CMI population is being served by our present community mental health system, and those who are receiving services cannot depend on a comprehensive system of care that will meet their needs.

Function Levels	Numbers	Percent
1. Dangerous	71	5
2. Unable to function due to symptoms	99	7
3. Lacks activity of daily living skills	165	12
4. Lacks community living skills	207	15
5. Needs role support	418	30
6. Seeks treatment	366	26
7. Mental health system independent	68	5
	<u>1394</u>	<u>100</u>

The Boston Study of CMI identified the above seven functional levels among the CMI population, and designed service packages for individual clients at each functional level. Costs were also developed for each service package. To estimate the effectiveness of each service package, a set of outcome measures from the database was developed and assigned to each package. The current DMHDD budget for the planning population was also estimated. The goal of the study was to apply a computer model to these data in order to find affordable service strategies for the Division.

Budgetary Considerations

Several affordable strategies that would improve system benefit-cost were suggested. These strategies call for enriched service packages for clients at the lower levels of functioning. The goal is to improve overall client progress, reduce the need and dependency on inpatient beds (API), promote community-residential living, and increase the number of clients becoming independent of the mental health system.

The department estimates the cost of a statewide CMI program at \$10 million to serve approximately 50% of the total population at risk. Approximately 2,700 clients would be served in 27 communities across the state. About 1,300 new clients would be identified from existing waiting lists and brought into the service delivery system. In addition, services for the existing 1,394 clients served through the community mental health system would be improved to ensure a basic level of quality service.

In order to assure quality and consistency of service, the department would request administrative support to set-up the CMI system. By placing staff in regional areas and providing travel funds so they can travel to local program sites, program and delivery issues can be dealt with as they arise.

The Department recognizes the compelling need for increased services for the CMI, and supports HB 412. This bill mandates a continuum of services for the CMI population. The ultimate goal of the bill is to

help the CMI to reach their capacity to function as independently as possible within their local communities.

RECOMMENDED BY: Mel Henry
Mel Henry, Director
Division of Mental Health
and Developmental
Disabilities

DATE: 2/20/86

APPROVED BY: John R. Pugh
John R. Pugh, Commissioner
Department of Health and
Social Services

DATE: 2/20/86

Offered: 2/26/86
Referred: Finance

Original sponsor: Fahrenkamp

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 388 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the chronically mentally ill."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 47.30 is amended by adding new sections to read:

9 Sec. 47.30.545. TREATMENT OF THE CHRONICALLY MENTALLY ILL. The
10 department shall provide for community based and locally or regionally
11 coordinated care and treatment of the chronically mentally ill.

12 Sec. 47.30.547. COMMUNITY SUPPORT SERVICES FOR THE CHRONICALLY
13 MENTALLY ILL. Communities that provide eligible mental health ser-
14 vices for the chronically mentally ill may receive funds from the
15 department for the following program elements:

16 (1) a short-term residential treatment program for indivi-
17 duals experiencing an acute episode or a situational crisis requiring
18 temporary removal from their home environment;

19 (2) a long-term residential treatment program with a full
20 day treatment component for persons who require intensive support;

21 (3) a transitional residential treatment program designed
22 for persons who are able to take part in programs in the general
23 community, but who without continued support would be at risk of
24 returning to a hospital;

25 (4) a semi-supervised, independent, but structured living
26 arrangement for persons who without some support and structure would
27 be at risk of returning to the hospital;

28 (5) a day treatment program capable of providing services
29 for clients whose residential needs are being met but who require

1 additional or extended treatment services;

2 (6) supported work and vocational training programs that
3 provide opportunities for clients to experience the benefits of mean-
4 ingful and productive work experiences with graduated levels of skill
5 and energy required;

6 (7) socialization centers designed to serve a broad range
7 of clients, as well as persons living in the community in general.

8 Sec. 47.30.548. STANDARDS FOR COMMUNITY SUPPORT SERVICES FOR THE
9 CHRONICALLY MENTALLY ILL. Communities providing mental health ser-
10 vices for the chronically mentally ill shall meet and maintain the
11 following treatment standards:

12 (1) facilities shall consist of small residential or day
13 treatment centers, in as close to a normal home or non-institutional
14 environment as possible without sacrificing client safety or care;

15 (2) staffing patterns shall reflect the cultural, linguis-
16 tic, and other social characteristics of the community, and shall
17 incorporate multidisciplinary professional staff to meet client diag-
18 nostic and treatment needs;

19 (3) programs shall be designed to encourage self-sufficient
20 and independent functioning through prevocational and vocational
21 training;

22 (4) programs shall promote client participation in plan-
23 ning, operating, and evaluating daily treatment and rehabilitation;

24 (5) programs shall be designed to coordinate with the
25 social service system as a whole and in particular shall be designed
26 to include the following three elements:

27 (A) emergency or crisis care in an emergency center or
28 at home by an emergency response team;

29 (B) an acute hospital for evaluation, diagnosis,

1 treatment and referral for persons who are in need of acute care;
2 and

3 (C) a case management system in which the case manager
4 serves as a coordinator of the various elements of the system and
5 as an advocate for the clients in the system; all case managers
6 shall be under direct supervision of a psychiatrist, psycholo-
7 gist, or a mental health clinician with a master's degree;

8 (6) programs shall contain standards for staff training,
9 including training in community outreach services and orientation in
10 cross-cultural issues.

11 * Sec. 2. AS 47.30.550 is amended by adding a new subsection to read:

12 (b) Notwithstanding (a) of this section, the department shall
13 purchase 100 percent of the eligible costs of services provided for
14 the chronically mentally ill, subject to the availability of state
15 funds to the department for implementing AS 47.30.520 - 47.30.620.

16 * Sec. 3. AS 47.30.570 is amended to read:

17 Sec. 47.30.570. ELIGIBLE COSTS; MAINTENANCE OF LOCAL EFFORT.
18 The department shall adopt regulations specifying the types of ser-
19 vices and program costs eligible for state participation. These regu-
20 lations shall include

21 (1) a provision excluding capital expenditures as eligible
22 costs; [AND]

23 (2) a requirement that the community entity contractor or
24 applicant agrees as a condition of contract approval that it will not
25 supplant existing local fund support of community mental health ser-
26 vices with funds received under AS 47.30.520 - 47.30.620 and that it
27 will continue local funding support of community mental health ser-
28 vices, in any year in which it contracts with the department, at a
29 level that is at least equal to the local funding support in the

1 previous year;

2 (3) a provision that costs of services provided to the
3 chronically mentally ill under AS 47.30.550(b) that are payable by
4 insurance, indemnity, or other third-party may not be included as
5 eligible costs.

Introduced: 2/7/86
Referred: Health, Education and
Social Services and Finance

1 IN THE SENATE

BY FAHRENKAMP

2

SENATE BILL NO. 388

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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19 and independent functioning through prevocational and vocational
20 training;

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22 ning, operating, and evaluating daily treatment and rehabilitation;

23 (5) programs shall be designed to coordinate with the
24 social service system as a whole and in particular shall be designed
25 to include the following three elements:

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27 at home by an emergency response team;

28 (B) an acute hospital for evaluation, diagnosis,
29 treatment and referral for persons who are in need of acute care;

1 and

2 (C) a case management system in which the case manager
3 serves as a coordinator of the various elements of the system and
4 as an advocate for the clients in the system; all case managers
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4 eligible costs.

COMMITTEE REPORT
SENATE

FURTHER:

FINANCE

2/7/86

Date 2-25-86

Mr. President

The Committee on HESS considered SB 388
relating to the chronically mentally ill.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 388 (HESS)
- new title
- same title and recommends DO PASS
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Joe P. Josephson
Willis Ferguson
Edna McVie

George Fahrenberg Do Pass
Chairman

Chairman recommendation _____

HOUSE

COMMITTEE REPORT

(11)

Date referred: 5/10/86

FURTHER REFERRALS:

DATE: 5-12-86

The FINANCE Committee has considered CSSSSB 391(SA) am "An Act relating to the ethical conduct of governmental activities; and providing for an effective date."

and recommends:

- [X] do pass
[] do not pass
[] do pass with attached amendment(s)
[] no recommendation
[] replace with [] same title [] new title

and recommends

[] further referral to the Committee

- and attaches: [] letter of intent
[] first fiscal note
[X] new fiscal note 62.5 4/21/86
[] zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Handwritten signatures: John C. ... Mike ... Ronald D. ... Pat ... Kim ...

Blank lines for signing other recommendations.

Chairman signature: John C. ...

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No 05555B 391(5A)AM
 Title: Act relating to the ethical conduct of government
 Sponsor: Rules by Request of the
 Requestor: Governor
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Department of Law
 BRU: Legal Services
 Components: Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		51.8	56.8	58.5	60.3	62.1
TRAVEL		1.7	1.7	1.8	1.9	1.9
CONTRACTUAL		2.4	2.6	2.7	2.8	2.9
SUPPLIES		3.4	2.1	2.1	2.2	2.2
EQUIPMENT		3.2	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		62.5	63.2	65.1	67.2	69.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		62.5	63.2	65.1	67.2	69.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Funds are for an attorney position and associated costs.

Prepared by: _____
 Division: Senator Jan Faiks, Co-chairman
Senate Finance Committee

Phone: 465-4523
 Date: 4/21/86

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Offered: 4/11/86
Referred: Finance

Original sponsor: Rules/Governor

BY THE STATE AFFAIRS
COMMITTEE

1 IN THE SENATE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 391 (State Affairs) am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the ethical conduct of govern-
7 mental activities; and providing for an effective
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 39 is amended by adding a new chapter to read:

11 CHAPTER 52. ALASKA EXECUTIVE BRANCH ETHICS ACT.

12 ARTICLE 1. DECLARATIONS.

13 Sec. 39.52.010. DECLARATION OF POLICY. (a) It is declared (1)
14 that high moral and ethical standards among public officers in the
15 executive branch are essential to the conduct of free government; and
16 (2) that the legislature believes that a code of ethics for the guid-
17 ance of public officers will discourage those officers from acting
18 upon personal or financial interests in the performance of their
19 public responsibilities, will improve standards of public service, and
20 will promote and strengthen the faith and confidence of the people of
21 this state in their public officers. It is further declared that
22 holding public office or employment is a public trust and that as one
23 safeguard of that trust, the people require public officers to adhere
24 to a code of ethics.

25 (b) The legislature declares that it is the policy of the state,
26 when a public employee is appointed to serve on a state board or
27 commission, that the holding of such offices does not constitute the
28 holding of incompatible offices unless expressly prohibited by the
29 Alaska Constitution, this chapter and any opinions or decisions

1 rendered under it, or another statute.

2 ARTICLE 2. CODE OF ETHICS.

3 Sec. 39.52.110. SCOPE OF CODE. (a) The legislature reaffirms
4 that each public officer holds office as a public trust, and any
5 effort to benefit a personal or financial interest through official
6 action is a violation of that trust. In addition, the legislature
7 finds that, so long as it does not interfere with the full and faith-
8 ful discharge of an officer's public duties and responsibilities, this
9 chapter does not prevent an officer from following other independent
10 pursuits. The legislature further recognizes that

11 (1) in a representative democracy, the representatives are
12 drawn from society and, therefore, cannot and should not be without
13 personal and financial interests in the decisions and policies of
14 government;

15 (2) people who serve as public officers retain their rights
16 to interests of a personal or financial nature; and

17 (3) standards of ethical conduct for members of the execu-
18 tive branch need to distinguish between those minor and inconsequen-
19 tial conflicts that are unavoidable in a free society, and those
20 conflicts of interests that are substantial and material.

21 (b) Unethical conduct is prohibited, but there is no substantial
22 impropriety if, as to a specific matter, a public officer's

23 (1) personal or financial interest in the matter is insig-
24 nificant, or of a type that is possessed generally by the public or a
25 large class of persons to which the public officer belongs, or

26 (2) action or influence would have insignificant or conjec-
27 tural effect on the matter.

28 (c) The attorney general, designated supervisors, hearing offi-
29 cers, and the personnel board must be guided by this section when

1 issuing opinions and reaching decisions.

2 Sec. 39.52.120. MISUSE OF OFFICIAL POSITION. (a) A public
3 officer may not use, or attempt to use, an official position for
4 personal gain, and may not intentionally secure or grant unwarranted
5 benefits or treatment for any person.

6 (b) A public officer may not

7 (1) seek other employment or contracts through the use or
8 attempted use of official position;

9 (2) accept, receive, or solicit compensation for the per-
10 formance of official duties or responsibilities from a person other
11 than the state;

12 (3) use state time, property, equipment, or other facil-
13 ities to benefit personal or financial interests; or

14 (4) take or withhold official action in order to affect a
15 matter in which the public officer has a personal or financial inter-
16 est; or

17 (5) attempt to benefit a personal or financial interest
18 through coercion of a subordinate.

19 Sec. 39.52.130. IMPROPER GIFTS. (a) A public officer may not
20 solicit, accept, or receive, directly or indirectly, a gift, whether
21 in the form of money, service, loan, travel, entertainment,
22 hospitality, employment, promise, or in any other form, that is a
23 benefit to the officer's personal or financial interests, under
24 circumstances in which it could reasonably be inferred that the gift
25 is intended to influence the performance of official duties, actions,
26 or judgment.

27 (b) Notice of the receipt by a public officer of a gift with a
28 value in excess of \$50, including the name of the giver and a descrip-
29 tion of the gift and its approximate value, must be provided to the

1 designated supervisor within 30 days after the date of its receipt if
2 the public officer may take or withhold official action that affects
3 the giver.

4 (c) In accordance with AS 39.52.240, a designated supervisor may
5 request guidance from the attorney general concerning whether accep-
6 tance of a particular gift is prohibited.

7 (d) The restrictions relating to gifts imposed by this section
8 do not apply to a campaign contribution to a candidate for elective
9 office if the contribution complies with laws and regulations govern-
10 ing elections and campaign disclosure.

11 Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION. (a)
12 A current or former public officer may not disclose or use information
13 gained in the course of, or by reason of, the officer's official
14 duties that could in any way result in the receipt of any benefit for
15 the officer or an immediate family member, if the information has not
16 also been disseminated to the public.

17 (b) A current or former public officer may not disclose or use,
18 without appropriate authorization, information acquired in the course
19 of official duties that is confidential by law.

20 Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS,
21 LEASES, OR LOANS. (a) A public officer, or an immediate family
22 member, may not attempt to acquire, receive, apply for, be a party to,
23 or have a personal or financial interest in a state grant, contract,
24 lease, or loan if the public officer may take or withhold official
25 action that affects the award, execution, or administration of the
26 state grant, contract, lease, or loan.

27 (b) The prohibition in (a) of this section does not apply to a
28 state grant, contract, or lease competitively solicited unless the
29 officer

1 (1) is employed by the administrative unit awarding the
2 grant, contract, or lease or is employed by the administrative unit
3 for which the grant, contract, or lease is let; or

4 (2) takes official action with respect to the award, exe-
5 cution, or administration of the grant, contract, or lease.

6 (c) The prohibition in (a) of this section does not apply to a
7 state loan if

8 (1) the public officer does not take or withhold official
9 action that affects the award, execution, or administration of the
10 loan held by the officer, or an immediate family member;

11 (2) the loan is generally available to members of the
12 public; and

13 (3) the loan is subject to fixed eligibility standards.

14 (d) A public officer shall report in writing to the designated
15 supervisor a personal or financial interest held by the officer, or an
16 immediate family member, in a state grant, contract, lease, or loan
17 that is awarded, executed, or administered by the agency the officer
18 serves.

19 Sec. 39.52.160. IMPROPER REPRESENTATION. (a) A public officer
20 may not represent, advise, or assist a person in any matter pending
21 before the administrative unit that the officer serves, if the rep-
22 resentation, advice, or assistance is

23 (1) for compensation, unless the representation, advice,
24 assistance, and compensation are required by statute, regulation, or
25 court rule, or is otherwise customary; or

26 (2) without compensation, but rendered to benefit a per-
27 sonal or financial interest of the public officer.

28 (b) This section does not prohibit activities related to collec-
29 tive bargaining.

1 (c) This section does not preclude a non-salaried member of a
2 board or commission from representing, advising, or assisting in any
3 matter in which the member has a personal or financial interest reg-
4 ulated by the board or commission on which the member serves, except
5 that the member must act in accordance with AS 39.52.220.

6 Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED. (a) A public
7 employee may not render services to benefit a personal or financial
8 interest or engage in or accept employment outside the agency which
9 the employee serves, if the outside employment or service is incom-
10 patible or in conflict with the proper discharge of official duties.

11 (b) A public employee rendering services for compensation, or
12 engaging in employment outside the employee's agency, shall report by
13 July 1 of each year the outside services or employment to the employ-
14 ee's designated supervisor. During the year, any change in an employ-
15 ee's outside service or employment activity must be reported to the
16 designated supervisor as it occurs.

17 Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE
18 SERVICE. (a) A public officer who leaves state service may not, for
19 two years after leaving state service, represent, advise, or assist a
20 person for compensation regarding a matter that was under considera-
21 tion by the administrative unit served by that public officer, and in
22 which the officer participated personally and substantially through
23 the exercise of official action. For the purposes of this subsection,
24 "matter" includes a case, proceeding, application, contract, or deter-
25 mination, but does not include the proposal or consideration of legis-
26 lative bills, resolutions and constitutional amendments, or other
27 legislative measures; or the proposal, consideration, or adoption of
28 administrative regulations.

29 (b) Nothing in this section prohibits an agency from contracting

1 with a former public officer to act on a matter on behalf of the
2 state.

3 (c) The head of an agency may waive application of (a) of this
4 section after determining that representation by a former public
5 officer is not adverse to the public interest. The waiver must be in
6 writing and a copy of the waiver must be provided to the attorney
7 general for approval or disapproval.

8 Sec. 39.52.190. AIDING A VIOLATION PROHIBITED. It is a viola-
9 tion of this chapter for a public officer to knowingly aid another
10 public officer in a violation of this chapter.

11 ARTICLE 3. DISCLOSURE AND ACTION TO PREVENT
12 VIOLATION OF CODE.

13 Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC
14 EMPLOYEES. (a) A public employee who is involved in a matter that
15 may result in a violation of AS 39.52.110 -- 39.52.190 shall

16 (1) refrain from taking any official action relating to the
17 matter until a determination is made under this section; and

18 (2) immediately disclose the matter in writing to the
19 designated supervisor.

20 (b) A public employee's designated supervisor shall make a
21 written determination whether an employee's involvement violates
22 AS 39.52.110 -- 39.52.190. If the supervisor determines that a vio-
23 lation could exist or will occur, the supervisor shall,

24 (1) reassign duties to cure the employee's potential vio-
25 lation, if feasible; or

26 (2) direct the divestiture or removal by the employee of
27 the personal or financial interests that give rise to the potential
28 violation.

29 (c) A designated supervisor may request guidance from the

1 attorney general, in accordance with AS 39.52.240, when determining
2 whether a public employee is involved in a matter that may result in a
3 violation of AS 39.52.110 -- 39.52.190.

4 Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS
5 OF BOARDS OR COMMISSIONS. (a) A member of a board or commission who
6 is involved in a matter that may result in a violation of AS 39.52.110
7 -- 39.52.190 shall disclose the matter on the public record and in
8 writing to the designated supervisor. The supervisor shall determine
9 whether the member's involvement violates AS 39.52.110 -- 39.52.190.
10 If a member of the board or commission objects to the ruling of the
11 supervisor, or if the supervisor discloses an involvement requiring a
12 determination, the members present at a meeting, excluding the in-
13 volved member, shall vote on the matter. If the supervisor or a
14 majority of the members voting determine that a violation will exist
15 if the member continues to participate, the member shall refrain from
16 voting, deliberating, or participating in the matter.

17 (b) The designated supervisor or the board or commission may
18 request guidance from the attorney general, in accordance with AS 39.-
19 52.240, when determining whether a member of a board or commission is
20 involved in a matter that may result in a violation of AS 39.52.110 --
21 39.52.190.

22 Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS. A person may
23 report to a public officer's designated supervisor, under oath and in
24 writing, a potential violation of AS 39.52.110 -- 39.52.190 by the
25 public officer. The supervisor shall provide a copy of the report to
26 the officer who is the subject of the report, and shall review the
27 report to determine whether a violation may exist. The supervisor
28 shall act in accordance with AS 39.52.210 or 39.52.220 if the supervi-
29 sor determines that the matter may result in a violation of

1 AS 39.52.110 -- 39.52.190.

2 Sec. 39.52.240. ADVISORY OPINIONS. (a) Upon the written re-
3 quest of a designated supervisor or a board or commission, the attor-
4 ney general shall issue opinions interpreting this chapter. The re-
5 quester must supply any additional information requested by the attor-
6 ney general in order to issue the opinion. Within 60 days after
7 receiving a complete request, the attorney general shall issue an
8 advisory opinion on the question.

9 (b) The attorney general may offer oral advice if delay would
10 cause substantial inconvenience or detriment to the requesting party.

11 (c) The designated supervisor or a board or commission shall
12 make a written determination based on the advice of the attorney
13 general. If the advice of the attorney general provides more than one
14 way for a public officer to avoid or correct a problem found under
15 AS 39.52.110 -- 39.52.190, the designated supervisor or the board or
16 commission shall, after consultation with the officer, determine the
17 alternative that is most appropriate and advise the officer of any
18 action required of the officer to avoid or correct the problem.

19 (d) A public officer is not liable under this chapter for any
20 action carried out in accordance with a determination made under
21 AS 39.52.210 -- 39.52.240 if the officer fully disclosed all relevant
22 facts reasonably necessary to the determination.

23 (e) The attorney general may reconsider, revoke, or modify an
24 advisory opinion at any time, including upon a showing that material
25 facts were omitted or misstated in the request for the opinion.

26 (f) A person may rely on an advisory opinion that is currently
27 in effect.

28 (g) A request for advice made under (a) of this section is
29 confidential.

1 (h) The attorney general shall publish in the Alaska Administra-
2 tive Journal, with sufficient deletions to prevent disclosure of the
3 persons whose identities are confidential under (g) of this section,
4 the advisory opinions issued under this section that the attorney
5 general determines to be of major import because of their general
6 applicability to executive branch officers.

7 Sec. 39.52.250. ADVICE TO FORMER PUBLIC OFFICERS. (a) A former
8 public officer may request, in writing, an opinion from the attorney
9 general interpreting this chapter. The attorney general shall give
10 advice in accordance with AS 39.52.240(a) or (b) and publish opinions
11 in accordance with AS 39.52.240(h).

12 (b) A former public officer is not liable under this chapter for
13 any action carried out in accordance with the advice of the attorney
14 general issued under this section, if the public officer fully dis-
15 closed all relevant facts reasonably necessary to the issuance of the
16 advice.

17 Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY
18 GENERAL REVIEW. (a) A designated supervisor shall quarterly submit a
19 report to the attorney general which states the facts, circumstances,
20 and disposition of any disclosure made under AS 39.52.210 -- 39.52.-
21 240.

22 (b) The attorney general shall review determinations reported
23 under this section. The attorney general may request additional
24 information from a supervisor concerning a specific disclosure and its
25 disposition.

26 (c) The report prepared under this section is confidential and
27 not available for public inspection unless formal proceedings under
28 AS 39.52.350 are initiated based on the report. If formal proceedings
29 are initiated, the relevant portions of the report are public

1 documents open to inspection. The attorney general shall, however,
2 make available to the public a summary of the reports received under
3 this section, with sufficient deletions to prevent disclosure of a
4 person's identity.

5 ARTICLE 4. COMPLAINTS; HEARING PROCEDURES.

6 Sec. 39.52.310. COMPLAINTS. (a) The attorney general may
7 initiate a complaint, or elect to treat as a complaint any matter
8 disclosed under AS 39.52.210, 39.52.220, 39.52.250, or 39.52.260.

9 (b) A person may file a complaint with the attorney general
10 regarding the conduct of a current or former public officer. A com-
11 plaint must be in writing, be signed under oath, and contain a clear
12 statement of the details of the alleged violation.

13 (c) If a complaint alleges a violation of AS 39.52.110 -- 39.-
14 52.190 by the governor, lieutenant governor, or the attorney general,
15 the matter shall be referred to the personnel board. The personnel
16 board shall retain independent counsel who shall act in the place of
17 the attorney general under (d) -- (i) of this section, AS 39.52.320 --
18 39.52.350, and AS 39.52.360(c) and (d).

19 (d) The attorney general shall review each complaint filed, to
20 determine whether it is properly completed and contains allegations
21 which, if true, would constitute conduct in violation of this chapter.
22 The attorney general may require the complainant to provide additional
23 information before accepting the complaint. If the attorney general
24 determines that the allegations in the complaint do not warrant an
25 investigation, the attorney general shall dismiss the complaint with
26 notice to the complainant and the subject of the complaint.

27 (e) The attorney general may refer a complaint to the subject's
28 designated supervisor for resolution under AS 39.52.210 or 39.52.220.

29 (f) If the attorney general accepts a complaint for inves-

1 tigation, the attorney general shall serve a copy of the complaint
2 upon the subject of the complaint, for a response. The attorney
3 general may require the subject to provide, within 20 days after ser-
4 vice, full and fair disclosure in writing of all facts and circum-
5 stances pertaining to the alleged violation. Misrepresentation of a
6 material fact in a response to the attorney general is a violation of
7 this chapter. Failure to answer within the prescribed time, or within
8 any additional time period that may be granted in writing by the
9 attorney general, may be considered an admission of the allegations in
10 the complaint.

11 (g) If a complaint is accepted under (f) of this section, the
12 attorney general shall investigate to determine whether a violation of
13 this chapter has occurred. At any stage of an investigation or re-
14 view, the attorney general may issue a subpoena under AS 39.52.380.

15 (h) A violation of this chapter may be investigated within two
16 years after discovery of the alleged violation.

17 (i) The unwillingness of a complainant to assist in an investi-
18 gation, the withdrawal of a complaint, or restitution by the subject
19 of the complaint may, but need not in and of itself, justify termina-
20 tion of an investigation or proceeding.

21 Sec. 39.52.320. DISMISSAL BEFORE FORMAL PROCEEDINGS. If, after
22 investigation, it appears that there is no probable cause to believe
23 that a violation of this chapter has occurred, the attorney general
24 shall dismiss the complaint and prepare and file a confidential summa-
25 ry with the personnel board. The attorney general shall communicate
26 disposition of the matter promptly to the complainant and to the
27 subject of the complaint.

28 Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION. After deter-
29 mining that the conduct of the subject of a complaint does not warrant

1 a hearing under AS 39.52.360, the attorney general shall recommend
2 action to correct or prevent a violation of this chapter. The attor-
3 ney general shall communicate the recommended action to the complain-
4 ant and the subject of the complaint. The subject of the complaint
5 shall comply with the attorney general's recommendation.

6 Sec. 39.52.340. CONFIDENTIALITY. (a) Before the initiation of
7 formal proceedings under AS 39.52.350, information regarding an inves-
8 tigation conducted under this chapter, or obtained by the attorney
9 general during the investigation, is confidential. The attorney
10 general and all persons contacted during the course of an investiga-
11 tion shall maintain confidentiality regarding the existence of the
12 investigation. A person who violates this section is guilty of a
13 class A misdemeanor.

14 (b) It is not a violation of this section for a person to con-
15 tact an attorney or to participate in a criminal investigation.

16 (c) The subject of the complaint may, in writing, waive the
17 confidentiality protection of this section.

18 Sec. 39.52.350. PROBABLE CAUSE FOR HEARING. (a) If the attor-
19 ney general determines that there is probable cause to believe that a
20 knowing violation of this chapter or a violation that cannot be cor-
21 rected under AS 39.52.330 has occurred, or that the subject of a com-
22 plaint failed to comply with a recommendation for corrective or pre-
23 ventive action, the attorney general shall initiate formal proceedings
24 by serving a copy of an accusation upon the subject of the accusation.
25 The accusation shall specifically set out the alleged violation.
26 After service, the accusation is a public document open to inspection.
27 Except as provided in AS 39.52.370(c), all subsequent proceedings are
28 open to the public.

29 (b) The subject of the accusation shall file an answer with the

1 attorney general within 20 days after service of the accusation, or at
2 a later time specified by the attorney general. If the subject of the
3 accusation fails to timely answer, the allegations are considered
4 admitted.

5 (c) If the subject of the accusation denies that a violation of
6 this chapter has occurred, the attorney general shall refer the matter
7 to the personnel board, which shall appoint a hearing officer to con-
8 duct a hearing.

9 (d) If the subject of the accusation admits a violation of this
10 chapter, the attorney general shall refer the matter to the personnel
11 board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.-
12 450, as appropriate.

13 Sec. 39.52.360. HEARINGS. (a) The hearing officer may convene
14 a pre-hearing conference to set a time and place for the hearing, and
15 for stipulation as to matters of fact and to simplify issues, identify
16 and schedule pre-hearing matters, and resolve other similar matters
17 before the hearing.

18 (b) The hearing officer may administer oaths, hold hearings, and
19 take testimony. Upon application by a party to the hearing, the
20 hearing officer may issue subpoenas under AS 39.52.380.

21 (c) The attorney general shall present the charges before the
22 hearing officer. At a hearing, the attorney general has the burden of
23 demonstrating by a preponderance of the evidence that the subject of
24 the accusation has, by act or omission, violated this chapter.

25 (d) The parties to a hearing are the attorney general and the
26 subject of the accusation. The subject of an accusation may be repre-
27 sented by counsel. Each party has an opportunity to be heard and
28 cross-examine witnesses, who shall testify under oath.

29 (e) The Administrative Procedure Act does not apply to hearings